

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WADE C. FEIDER, }
Plaintiff, } No. CV-10-199-LRS
vs. } **ORDER DENYING
MOTION FOR
RECONSIDERATION**
STATE FARM FIRE AND }
CASUALTY COMPANY, }
a foreign corporation, }
Defendant. }

BEFORE THE COURT is Plaintiff's Motion For Reconsideration (Ct. Rec. 19). The motion is heard without oral argument.

Plaintiff asks the court to reconsider its November 19, 2010 "Order Granting Motion To Stay" (Ct. Rec. 18) to allow Plaintiff to take a single deposition of State Farm "Team Manager" Dan Leary who signed the April 30, 2010 letter from Defendant denying Plaintiff's insurance claim.

" '[T]he major grounds that justify reconsideration involve an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *Pyramid Lake Paiute Tribe v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4478, at 790); see *Frederick S. Wyle P.C. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985); see also *Keene Corp. v. International Fidelity Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982) (reconsideration available "to correct manifest errors of law or fact or to present

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1 newly discovered evidence"). Such motions are not the proper vehicle for offering
 2 evidence or theories of law that were available to the party at the time of the initial
 3 ruling. *Fay Corp. v. Bat Holdings I, Inc.*, 651 F. Supp. 307, 309 (W.D. Wash.
 4 1987); see *Keene Corp.*, 561 F. Supp. at 665-66.

5 Since a district court has discretion to stay discovery a civil action in favor of
 6 parallel criminal proceedings, *Keating v. Office of Thrift Supervision*, 45 F.3d 322,
 7 324 (9th Cir. 1995), it can hardly be said the court committed a "clear error" in
 8 granting a stay. Accordingly, it appears the argument Plaintiff makes is that it is a
 9 "manifest injustice" to preclude him from taking at least the deposition of Mr.
 10 Leary. It is noted that Defendant's motion to stay was prompted by Plaintiff's
 11 request to take the depositions of Mr. Leary and Scott Wahl, both of whom are
 12 State Farm Special Investigations Unit ("SIU") personnel. While Mr. Wahl will
 13 apparently be called as a prosecution witness at Plaintiff's criminal trial, Mr. Leary
 14 will not and therefore, according to Plaintiff, "the criminal discovery process is not
 15 available to get testimony from Mr. Leary." Plaintiff asserts that "Mr. Leary's
 16 deposition will help balance the scales between Plaintiff and State Farm in terms of
 17 deposition testimony" and testimony from Leary's deposition "will likely yield
 18 exculpatory evidence that is not available in the more limited criminal discovery
 19 process because Mr. Leary is not listed as a witness."

20 The court concludes there is no "manifest injustice" in not allowing the
 21 deposition of Mr. Leary. As this court explained in its order granting the motion to
 22 stay, State Farm did not depose Plaintiff as part of the captioned civil action
 23 seeking damages from State Farm for negligence, breach of contract, bad faith, and
 24 violation of the Washington Consumer Protection Act. Plaintiff was examined
 25 under oath by State Farm as part of its insurance investigation before State Farm
 26 denied Plaintiff's insurance claim and before he commenced this action against
 27 State Farm. Plaintiff was not examined as part of the civil discovery process.
 28 There has been no discovery advantage for Defendant. Allowing the Plaintiff to

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1 depose Mr. Leary in this civil action would create an advantage for the Plaintiff and
2 has the distinct potential for compromising the pending criminal proceedings
3 against Plaintiff. Plaintiff cannot depose Mr. Leary as part of the criminal
4 proceedings. The only apparent reason for Plaintiff to depose Mr. Leary as part of
5 this civil action is an effort to avoid the discovery restrictions which apply in
6 criminal proceedings and obtain evidence to be used in Plaintiff's defense at his
7 criminal trial. It is quite possible that would involve the Plaintiff calling Leary as a
8 defense witness at that trial.

9 Plaintiff acknowledges that because of the filing of this civil action,
10 Defendant has divulged its claims file to Plaintiff. According to the declaration of
11 Plaintiff's counsel (Ct. Rec. 23-1 at Paragraph 9), "[t]he State Farm[] claims file
12 revealed that State Farm's own fire cause and origin expert determined that the fire
13 was accidental, and Mr. Feider would like to know why State Farm Team Leader
14 Dan Leary nevertheless denied the claim." The claims file information is obviously
15 available to criminal defense counsel who can make what use of it he deems
16 appropriate at Plaintiff's criminal trial (i.e., cross-examination of the State's
17 witnesses). Plaintiff's counsel adds that the purpose of the civil action is "to obtain
18 a complete remedy against State Farm for its bad faith, not just to obtain
19 information for use at the criminal trial." (Ct. Rec. 23-1 at Paragraph 10). Plaintiff
20 is not being denied an opportunity to prove bad faith. His civil action is merely
21 being stayed pending completion of his criminal trial. Denying Plaintiff the use of
22 the civil discovery process pending completion of his criminal trial does not
23 prevent him from having a fair criminal trial. Plaintiff's criminal defense lawyer
24 can conduct the investigation he deems necessary to defend his client at trial,
25 including the use of investigators to interview witnesses, and the State must still
prove beyond any reasonable doubt that Plaintiff committed arson.

26 There is no "manifest injustice" in staying this civil action and precluding
27 the Plaintiff from using the civil discovery process in an effort to obtain evidence

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1 for potential use at his criminal trial. To the contrary, a stay is in the interest of
2 justice.

3 Plaintiff's Motion For Reconsideration (Ct. Rec. 19) is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
5 order and forward copies to counsel of record.

6 **DATED** this 13th day of January, 2011.

7 *s/Lonny R. Sukko*

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9 LONNY R. SUKO
Chief United States District Judge

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